

FEB 21 2001

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 4981
DATE COMPLAINT FILED: 02/28/00
DATE OF NOTIFICATION: 03/07/00
DATE ACTIVATED: 07/12/00

EXPIRATION OF STATUE OF
LIMITATIONS: 02/28/05
STAFF MEMBER: Jack A. Gould

COMPLAINANT: National Republican Congressional Committee

RESPONDENTS: Citizens for Claspill for Congress
Paul Brown¹
James L. Claspill, acting as treasurer
Media Magic Public Relations
John W. Ballinger
William E. Maritz
Ann Tretter

RELEVANT STATUTE(S): 2 U.S.C. § 434(b)
2 U.S.C. § 437g(d)
11 C.F.R. § 104.3(a)
11 C.F.R. § 104.3(b)
11 C.F.R. § 104.3(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
2001 FEB 22 A 11:27

¹ According to James L. Claspill in his March 6, 2000 fax to the RAD analyst, Paul Brown ceased being treasurer for the Committee in or about March 2000. Since that time, Mr. Claspill has signed all of the Reports for the Committee.

I. GENERATION OF MATTER

This matter was initiated by a complaint filed by the National Republican Congressional Committee ("NRCC") on February 28, 2000. The NRCC alleges that Citizens for Claspill for Congress (the "Committee") and Paul Brown ("Brown"), as treasurer, violated the Federal Election Campaign Act by failing to itemize \$202,460 in contributions, by reporting contributions from three individuals (John W. Ballinger, William E. Maritz and Ann Tretter) who did not make contributions, and by failing to report expenditures for vendors who the candidate, James L. Claspill ("Claspill"), claimed to have hired for the campaign. The Committee, Brown, Claspill, and Media Magic Public Relations were notified on March 7, 2000. John W. Ballinger, William E. Maritz and Ann Tretter were notified on March 9, 2000. Responses to the complaint have been received from Magic Media Public Relations and John W. Ballinger. This Office has not received responses from Brown, William E. Maritz, or Ann Tretter. On April 24, 2000, after receiving a 30-day extension of time, counsel for Claspill and the Committee filed a response in which they claimed that their efforts to fully respond to the complaint had been slowed by the Committee's treasurer's failure to cooperate with them. Claspill and the Committee requested that the matter be stayed until a full response could be submitted. As of yet, the Commission has not received any further response from Claspill or the Committee.

II. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires each treasurer of a political committee to file reports of receipts and disbursements in accordance with

the schedule established by the Act. 2 U.S.C. § 434(a). With respect to contributions, the reports must include, among other things:

the identification of each--person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

2 U.S.C. § 434(b)(3)(A).

As for loans, the reports must specify the:

person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan.

2 U.S.C. § 434(b)(3)(E).

Finally, with respect to disbursements, the reports must include, among other things:

the name and address of each--person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

2 U.S.C. § 434(b)(5)(A).

The Act also addresses violations of law that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for

disguising" his or her actions. *Id.* at 214-15. The court also found that the evidence did not have to show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), cert. denied, 439 U.S. 838 (1989)).

III. BACKGROUND/ALLEGATIONS

The Complaint

In 1999, Claspill was a candidate for the Democratic nomination in Missouri's Ninth Congressional District.² This was Claspill's second attempt to win a congressional seat. In 1996, Claspill unsuccessfully sought the Democratic nomination in Missouri's Second Congressional District. In that campaign, Claspill raised only \$21,775 and tallied only 794 votes. In 1999, after he announced his candidacy in the Ninth Congressional District, Claspill reportedly told the press that he faced an uphill battle to raise enough money to be a serious contender against Rep. Hulshof. A copy of the *Columbia Daily Tribune* article is attached to the complaint. The gravamen of the NRCC's complaint is that Claspill intentionally overstated his contributions in an attempt to appear to be a legitimate and viable candidate.

In its complaint, the NRCC alleges that the Committee, in its 1999 Year End Report, reported receiving \$250,460 in contributions, of which \$202,460 was not itemized. Of the remaining \$47,900, the Committee itemized several contributions of less than \$200 that were not required to be itemized. The NRCC asserts that this incongruity in itemizing contributions

² In his 7/15/00 fax to the RAD analyst, Claspill stated that he is no longer "an active candidate this year."

brings into question the accuracy of the report. The complaint further alleges that three individuals (John W. Ballinger, William E. Maritz and Ann Tretter), from whom the Committee reported receiving \$1,000 contributions, never made contributions to the Committee. The sworn affidavits of those individuals are attached to the complaint.

Finally, the complaint alleges that the 1999 Year End Report did not show expenditures for vendors that Claspill purportedly retained for the campaign. In the *Columbia Daily Tribune* article, Claspill reportedly stated: "I have hired a company out of Washington, D.C., and we are going to start raising money at the end of September." In an article published in the *Columbia Missouri Tribune Online*, which is also attached to the complaint, Claspill reportedly stated that his consultant, Media Magic of St. Louis ("Media Magic") had done very well on his behalf. In its response to the complaint, however, Media Magic stated that it was not retained by Claspill.

Attachment 1.

5100-904-40-22

PAGES 6 THRU 10 DELETED

EE-UT-4UG-0016

The Remaining Respondents

There is no reason to believe that Media Magic Public Relations, John W. Ballinger, William E. Maritz or Ann Tretter violated the Act. In its response to the complaint, Media Magic stated that it never provided services to the campaign. John W. Ballinger swore out an affidavit to the effect that he never made a contribution to the Committee and, in his response to the complaint, stated that he was unfamiliar with Claspill and his campaign. Although they have not responded to the complaint, William E. Maritz and Ann Tretter also stated under oath that they never made a contribution to the Committee.

As such, this Office recommends that the Commission find no reason to believe that Media Magic Public Relations, John W. Ballinger, William E. Maritz or Ann Tretter violated the Act.

22.04.406.0017

V. **RECOMMENDATIONS**

1.

2.

3.

4.

5.

6. Find no reason to believe that Media Magic Public Relations, John W. Ballinger, William E. Maritz or Ann Tretter violated the Act, and close the file as to them.

7.

8.

9.

Lois G. Lerner
Acting General Counsel

2/21/01
Date

BY: Abigail A. Shane
Abigail A. Shane
Acting Associate General Counsel

Staff assigned: Jack A. Gould

11-11-77



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: February 21, 2001

SUBJECT: MUR 4981-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters

☐

MUR

☐

DSP

☐

STATUS SHEETS

☐

Enforcement

☐

Litigation

☐

PFESP

☐

RATING SHEETS

☐

AUDIT MATTERS

☐

LITIGATION

☐

ADVISORY OPINIONS

☐

REGULATIONS

☐

OTHER

☐

22.04.406.0020